

DEPARTMENT OF INSURANCE**Legal Division, Special Projects Bureau**

45 Fremont Street, 21st Floor
San Francisco, CA 94105

**WORKERS' COMPENSATION FRAUD REGULATIONS****§ 2698.50. Authority and Purpose**

These regulations are promulgated pursuant to authority granted to the Insurance Commissioner under the provisions of [Section 1872.83 of the California Insurance Code](#). The purpose of these regulations is to set forth the criteria for distribution of funds to district attorneys for enhanced investigation and prosecution of workers' compensation insurance fraud cases, including an application process and subsequent reporting requirements.

§ 2698.51. Definitions

For the purposes of these regulations:

- (a) "Application" means the written document submitted to the Commissioner by which a local district attorney requests program funding, including a plan setting forth the district attorney's intended use of funds to enhance investigation and prosecution of workers' compensation insurance fraud.
- (b) "Assessment" means the surcharge collected from insurers and self-insured employers to support the program to enhance investigation and prosecution of workers' compensation fraud.
- (c) "Case" means the file set up by the California Department of Insurance Fraud Division (formerly, the Bureau of Fraudulent Claims) and/or the California Department of Insurance Investigations Bureau, and/or district attorney in the course of and for the purpose of investigation, development of evidence and prosecution of individual or consolidated activities of suspected workers' compensation fraud.
- (d) "Claim" means the request for payment of workers' compensation benefits which has been submitted to an insurer as defined in [Section 1877.1\(c\) of the Insurance Code](#).
- (e) "Commissioner" means the Insurance Commissioner of the state of California.
- (f) "County Plan" means the plan submitted to the Commissioner as part of the application process by the local district attorney which details the projected use of the funds sought pursuant to these regulations.
- (g) "Department" means the California Department of Insurance.
- (h) "District Attorney" means the prosecuting officer of a California county jurisdictional district.

(i) "Division" means the California Department of Insurance Fraud Division, formerly known as the Bureau of Fraudulent Claims. The former Bureau was designated a Division subsequent to the implementation of CIC sections 1872.8 et seq. The California Department of Insurance Investigations Bureau is responsible for investigating premium fraud.

(j) "Incidental Expenses" means those costs incurred by the California Department of Insurance and the California Department of Industrial Relations to administer the program and may include Fraud Assessment Commission expenses, costs of collection of assessments, administrative support of the Fraud Division program component, management of the distribution and oversight of monies allocated to the district attorneys.

(k) "Local Program Funding" means that portion of the funds collected and distributed to district attorneys pursuant to [section 1872.83 of the Insurance Code](#).

(l) "Premium Fraud", also commonly called "employer fraud", are those acts of fraud, including and not limited to under-reporting payroll, misclassification of employees' duties, experience modification evasion, committed by or at the direction of an employer, for the purpose and with the effect of reducing premium liability.

(m) "Program" means those activities conducted by the Department, the Department of Industrial Relations, and any other agency which are necessary to fund or administer enhanced investigation and prosecution of workers' compensation insurance fraud through assessments on insurers as defined in [Section 1877.1\(c\) of the Insurance Code](#) and the distribution of funds to the Fraud Division to district attorneys for the purpose of investigation and prosecution of workers' compensation insurance fraud.

(n) "Regulations" means these regulations, California Code of Regulations, Title 10, Chapter 5, Subchapter 9, Article 3.

(o) "Suspected Fraudulent Claim" means a claim referred to the Fraud Division because the insurer, employer or claims administrator suspects, knows or reasonably believes that the claim involves a person who has committed a fraudulent act related to workers' compensation insurance.

§ 2698.52. Application Procedure

(a) A Request for Application (RFA) shall be distributed annually on or before April 1, to each county district attorney in the state and shall include county data indicators, as outlined in Section 2693.5, which form the basis for each district attorney's base allocation.

(b) The RFA shall specify a deadline for submission of applications to the Commissioner, which shall be 30 days after distribution of the RFA.

(c) Any district attorney who fails to submit an application, or whose application is not received by the Commissioner at the address specified in the RFA, by the deadline date and time set forth in the RFA, shall not be considered for funding. ~~The Department shall reserve five percent of those funds made available for local programs for the purpose of enhanced investigation and prosecution of workers' compensation cases. These reserved funds are intended to offset unanticipated costs of prosecution of cases involving workers' compensation fraud and shall be distributed in January of the year following the regular annual grant award, pursuant to section 2698.53(c), as augmentation funding.~~

(d) Applications for funding submitted by the district attorneys shall list the County Plan and budget elements as outlined in Section 2693.6 and shall include a Table of Contents to facilitate plan review.

(e) Two or more counties may coordinate planning and submit applications addressing a multi-county area so long as each individual county plan identifies its proportion of the budget.

(f) At such time as the Fraud Assessment Commission makes funds available through initiating an assessment to augment fund availability, the Review Panel, as established by section 2698.52(f) of these regulations, shall analyze applications for the purpose of assisting the Commissioner in making funding determinations using the criteria set forth in section 2698.54 of these regulations. The Commissioner shall make his or her determination and shall obtain the advice and consent of the Fraud Division and the Fraud Assessment Commission, as to the most effective distribution of moneys.

§ 2698.53. Funding Procedure

(a) Funding shall be in the form of a Grant Award Agreement and shall require an enabling resolution approving and authorizing execution of the agreement by the county Board of Supervisors.

(b) ~~Subsequent to the initial grant award, funding shall be distributed on a semi-annual basis, in July and January, unless otherwise specified and justified in the district attorney's Application.~~ Funding shall be distributed on an annual basis in July and funding shall be contingent upon the adoption of each annual State Budget Act and the collection of assessments.

(c) Any portion of distributed funds not used for local program purposes at the termination of each program period as specified in the Request for Application shall be returned to the Workers' Compensation Fraud Account in the Insurance Fund to be reprogrammed for use in the subsequent program year for local program purposes. Counties shall provide the Department with an estimate of unused funds within sixty (60) days after the termination of the program period and shall complete the transfer of funds to the Insurance Fund within thirty (30) days after the completion of the final audit.

(d) A district attorney who has undertaken investigations and prosecutions which will continue into a subsequent year may carry over into the subsequent year distributed but unused funds not exceeding twenty-five percent (25%) of the total annual finding, provided that the district attorney specifies and justifies in writing to the Commissioner how those funds will be used (1) at the end of the program period and (2) at the time of the subsequent application. In the event that distributed, but unused, funds exceed twenty-five (25%) of the previous total annual funding, due to extenuating circumstances, the Commissioner shall consider and approve requests for carry-over to the extent that the district attorney provides justification.

§ 2698.54. Criteria for Distribution of Funds to the District Attorneys

Each district attorney's allocation shall consist of two parts: a base allocation and a program award, both made as a result of the evaluation of the county plans. The base allocation shall be made from fifty percent (50%) of the total funds and allocated according to the following "caseload estimate", an estimate of the district attorney's proportional share of the state's

workers' compensation fraud investigation and prosecution caseload:

(a) The county's proportion of the state's annual average number of workers engaged in wage and salary employment for the most recent year of report shall receive the greatest weight and shall account for sixty-six percent (66%) of the base allocation funding. The employment data source is the Employment Development Department Annual Planning Information.

(b) The county's proportion of the state's workers' compensation suspected fraudulent claims as reported to the California Department of Insurance over the previous three years shall account for thirty-four percent (34%) of the base allocation funding. The source for data on the number of suspected fraudulent claims reported to the Division is the California Department of Insurance.

§ 2698.55. County Plan

Each district attorney's program award shall be based on the evaluation of the County Plan. The County Plan shall be evaluated by a Review Panel to be comprised of two members of the Fraud Assessment Commission, the Chief of the Fraud Division or his or her designee, the Director of the Department of Industrial Relations or his or her designee, and an expert in consumer crime investigation and prosecution to be designated by the Commissioner.

The County Plan shall include but need not be limited to the following elements detailing the county's qualifications and the manner in which the district attorney will use the funds to investigate and prosecute workers' compensation insurance fraud:

(a) Qualifications.

(1) A description of the district attorney's experience in investigating and prosecuting workers' compensation insurance fraud. Relationships with other public or private entities which may be useful to the program should also be included.. Specific activity during the past two years should be detailed as follows:

(A) Number of investigations initiated, specifying number of identified suspects per investigation;

(B) Number of warrants or indictments issued, specifying number of suspects and/or defendants;

(C) Number of arrests made;

(D) Number of convictions obtained, specifying number of defendants, number obtained by trial verdict and number obtained by plea or settlement;

(E) Amount of fines and penalty assessments ordered and collected, specifying number of defendants; and

(F) Amount of restitution ordered and collected, specifying number of defendants and victims.

(2) The panel shall consider each applicant county's population size in proportion to its historic commitment of resources to insurance fraud investigation and prosecution.

(b) Plan. The district attorney's plan for investigation and prosecution of workers' compensation fraud, including, at a minimum, the following elements:

(1) Problem Statement. A description of the extent and nature of the problem in the county, including its sources and causes, its economic and social impact, its unique aspects, if any, and what is needed to resolve the problem. Supporting data, evidence, or indicators of fraudulent activity related to workers' compensation insurance should be included. The data and information may be derived from third party administrators, self-insured employers, other local law enforcement entities, insurers or the Fraud Division or the Investigation Bureau of the California Department of Insurance.

(2) Program Strategy. This section shall specify how the district attorney will use program funds to address the problem defined above including:

(A) Outreach. A description of the manner in which the district attorney will develop his or her caseload, the source(s) for referrals of cases for investigation and/or prosecution, whether directly from the Division and/or directly from self-insured employers, third-party administrators and insurers or a combination;

(B) Personnel. The number, position titles and position justification of personnel to be funded fully or in part through grant funds, including descriptions of the qualifications of personnel to be assigned to the program and an organization chart identifying positions to be funded;

(C) Program Coordination. A description of the manner in which the district attorney plans to coordinate involved sectors, including employers, insurers, medical and legal provider communities, the Fraud Division and the Investigation Bureau of the California Department of Insurance;

(D) Management Plan. The detailed plan and schedule of the steps the district attorney will complete in achieving the objectives of the program and a discussion of how the program will be organized and what internal quality control and budget monitoring procedures will be employed. This part should also include how this program will be integrated with any other anti-fraud program(s) maintained within the district attorney's office;

(E) Staff Development. The plan for ongoing training of personnel on the workers' compensation system and the investigation and prosecution of fraud. Staff development may be addressed through coordination with the Division insurers or other entities.

(3) Objectives. This section shall outline the district attorney's anticipated achievements in the following areas:

(A) Estimated number of investigations to be initiated during the grant period, including a separate estimate of the number resulting from carryover investigations; and

(B) Estimated number of prosecutions to be initiated during the grant period.

§ 2698.56. Budget Proposal

The proposed budget forms the basis for program management and audit and must be presented in line-item detail and cover the period from July 1 through June 30. The budget may include a line item for an independent audit to be completed at the end of the program period. The district attorney's budget shall include, but need not be limited to, the following:

- (a) Those salaries and benefits which are computed at the county salary and benefit schedule.
- (b) Operation support costs.
- (1) Estimated costs shall be listed by line item.
- (2) Itemized costs shall conform to county policy regarding appropriateness of expenditures.
- (3) Allowable costs are those costs incurred in district support of local program activities, including program related travel, equipment costs proportional to their program-related use, facilities cost, expert witness fees, audits.
- (c) Indirect costs, including those cost not readily itemized but necessary to the local program operation ~~shall be determined in accordance with Federal OMB Circular A-87 (dated 1/15/81). If the indirect costs are not determined in accordance with that Circular and instructions, they~~ may not exceed ten percent (10%) of personnel salaries (excluding benefits and overtime) or five percent (5%) of total direct program costs (excluding equipment). Counties must have on file an approved indirect cost allocation plan specifying how the rate was established, supported by formal accounting records to substantiate the charges. Indirect costs may not include any line item charged as a direct cost.
- (d) Non-allowable budget items include:
 - (1) Real property purchases and improvements;
 - (2) Aircraft or motor vehicles, except the purchase of motor vehicles which is specifically justified to the Commissioner;
 - (3) Interest payments;
 - (4) Food and beverages, except as purchased in connection with program-related travel;
 - (5) Weapons or ammunition unless included as part of a benefit package.
- (e) Program funds must be used to support enhanced investigation and prosecution of workers' compensation insurance fraud and shall not be used to supplant funds which, in the absence of program funds, would be made available for any portion of the local workers' compensation insurance fraud program. Budget modifications are allowable so long as they do not change the grant award amount.
- (f) Budget modifications are allowable so long as they do not change the grant award amount.

§ 2698.57. Funding Recommendations

Based on the Review Panel's evaluation of each County Plan, the Panel will forward funding recommendations to the Commissioner. If the County Plan fails to respond adequately to the required items as specified in Sections 2693.6 and 2693.7, the Panel may recommend funding at the district attorney's base allocation level; however, the Panel shall consider the importance of establishing a program presence in a county to increase community awareness and deter workers' compensation fraud. However, Applications which fail to meet the specified criteria may be recommended for no funding.

§ 2698.58. Fraud Assessment Commission Review and Consent

(a) Before funds can be distributed to the District Attorneys, the Commissioner shall make a determination, based on the recommendation of the Review Panel and with the advice and consent of the Fraud Division as to the most effective distribution of moneys, and shall forward his or her decision on the funding distribution to the Chair of the Fraud Assessment Commission within five business days of the date of the Review Panel's recommendation on funding for the Commission's advice on and consent to the funding distribution. The Fraud Assessment Commission shall notify the Commissioner in writing within ten business days of receipt of the Commissioner's decision whether it agrees or if it does not agree with the recommended funding distribution.

(b) In the event that the Commission does not agree with the Commissioner's recommended funding distribution, the Commission shall set forth, in writing, the basis upon which its consent has been withheld and shall forward such written decision to the Commissioner within ten business days along with a written request for reconsideration. If the Commission indicates that it does not agree with the Commissioner's funding distribution, the Commissioner shall reconsider the distribution based upon the written advice of the Commission.

(c) After reconsideration of the distribution, the Commissioner shall forward to the Commission, within ten business days, his or her written recommendation upon reconsideration. If the Commission withholds its consent to the Commissioner's reconsidered funding distribution, the Commission shall set forth, in writing, the basis upon which its consent has been withheld and shall forward such written decision within ten business days, along with a request for submission of a revised County Plan, to the District Attorney(s) submitting the disapproved County Plan.

§ 2698.59. District Attorney Reporting

Each district attorney receiving regular annual funds and/or augmentation funds pursuant to Section 1872.83 shall submit an annual report at the close of the regular annual funding program period, within the deadlines specified in subsection (d), below, to the Commissioner on the local program and its accomplishments. Failure to submit the annual report shall be considered in subsequent funding decisions. At a minimum the report shall include the following items:

(a) An Expenditure Report, which shall include the following:

(1) Personnel: salaries and benefits.

(2) Operations cost breakdown.

(3) Explanation of any significant variances from the district attorney's plan as approved.

(b) A financial report prepared by an independent auditor who is a qualified state or local government auditor or independent public accountant licensed by the State of California or the County Auditor Controller. The audit report shall certify that local expenditures were made for the purposes of the program as specified in [Section 1872.83 of the Insurance Code](#), the regulations as adopted, the guidelines in the Request for Application, and the County Plan.

(1) The auditor shall use county policies and procedures as the standard for verifying appropriateness of personnel and support costs.

(2) In the event the program audit is included as part of an organization-wide audit, revenues and expenditures for the local program must be shown separately.

(c) A Program Report, which shall include the following:

(1) Number of investigations initiated related to workers' compensation insurance fraud, with number of defendants indicated;

(2) Number of arrests or civil suit filings related to workers' compensation insurance fraud, with number of defendants indicated;

(3) Number of convictions or civil awards related to workers' compensation insurance fraud, with number of defendants, number of trials, number of pleas and/or settlements indicated;

(4) Dollar savings realized as a result of workers' compensation insurance fraud case prosecutions, including fines and penalty assessments ordered and collected and restitution ordered and collected, with number of defendants indicated;

(5) Summary of activity with respect to pursuing a reduction of workers' compensation fraud in coordination with the following:

(A) Fraud Division.

(B) Insurance companies.

(C) Employers, as defined in [Section 3300 of the Labor Code](#), who are self-insured for workers' compensation and doing business in the state.

(d) The deadlines for submission are as follows:

(1) Expenditure Reports and Audit Reports must be submitted to the Commissioner no later than four (4) months after the close of the program period as specified in the Request for Application. A county may report an extension of time for the submission of the Expenditure and/or Budget Report in the event an organization-wide audit will delay the submission of either or both of the said reports.

(2) Program Reports must be submitted to the Commissioner no later than two months after the close of the program period as specified in the Request for Application.

(e) There shall be a grant liquidation period for ninety (90) days following the termination of the program period during which costs incurred but not paid may be paid and deducted from the program budget.

(f) The Commissioner may perform such additional audits or reviews of any local program as he or she may deem necessary and shall have access to all reports, working papers, correspondence, or other documents, including audit reports and audit working papers related to the audit report or local program.